THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.10881 OF 2005

Dated: 20-12-2005

Between

Venaparthi Ramakrishna, S/o. Venkata Rao, R/o. S. Thimmapuram Village, Krilampudi Mandal, East Godavari District and others.

...PETITIONERS

AND

The Office of the Executive Officer/Person in Management,
Sri Mattapalli Vari Choultry, Samalkot, East Godavari District and another.

...RESPONDENTS

ORDER:

Petitioners seek a Writ of Mandamus to declare the notices issued by the first respondent dated 21.04.2005 relating to the lands in their possession belonging to the first respondent temple as illegal and arbitrary.

Learned counsel for the petitioners submits that the petitioners are landless poor and their applications to declare them as landless poor to get the benefit under Section 82 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act') have been pending before the Assistant Commissioner of Endowments – second respondent. Without considering the said applications the first respondent issued the impugned notices dated 21.04.2005 treating the petitioners as encroachers and directing them to evict the lands leased within thirty days of the receipt of the notice, failing which they will be evicted.

Insofar as the petitioners 4 and 5 are concerned, it is stated that the fourth petitioner is a lessee in an extent of Ac.4.03 cents of wetland and the fifth petitioner is a lessee in respect of Ac.5.26 cents. Therefore, it cannot be said that they are small farmers.
Admittedly, the notices issued against petitioners 1 to 3 go to show that they are lessees in respect of wetland in an extent of less than one acre.

If that be so, all leases granted, automatically stands cancelled by virtue of Section 82 of the Act and the question of treating the petitioners as encroachers under Section 83 of the Act does not arise and without taking recourse under Section 83 of the Act they can be evicted straightaway. However, if any applications of the petitioners are pending and without considering the same to determine as to whether the petitioners are small farmers or not, the question of evicting them does not arise.

Accordingly, the writ petition is dismissed as against petitioners 4 and 5. Insofar as the petitioners 1 to 3 are concerned, unless their applications, if any pending, before the second respondent are considered and disposed of determining as to whether they are small farmers or not, they shall not be evicted subject to the condition that the petitioners 1 to 3 continue to deposit the lease amount.

The writ petition is accordingly disposed of against petitioners 1 to 3.

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V. ESWARAIAH, J

December 20, 2005

DSK